

Sample

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below  
STATE AGENCY'S NAME  
**DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)**  
CONTRACTOR'S NAME  
**NAME (BORROWER)**
2. The term of this Agreement is: **DATE** to *(30 years)*
3. The maximum amount of this Agreement is: **\$ 0.000.000.00 XXXX XXX DOLLARS**
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Construction Loan and Operation Contract	2	Pages
Exhibit B – Small Craft Harbor Loan Standard Terms and Conditions	15	Pages
Exhibit C – <b>NAME</b> Feasibility Report	XX	Pages
Exhibit D – Loan Contract Security Requirements	1	Page

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME <i>(If other than an individual, state whether a corporation, partnership, etc.)</i> <b>NAME</b>		
BY <i>(Authorized Signature)</i>	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME <b>DEPARTMENT OF BOATING AND WATERWAYS</b>		
BY <i>(Authorized Signature)</i>	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>RAYNOR, TSUNEYOSHI, Director</b>		
ADDRESS <b>2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIF. 95815-3888</b>		
		<input type="checkbox"/> Exempt per _____

CONSTRUCTION LOAN AND OPERATION  
CONTRACT

Small Craft Harbor Loan

1. LOAN

- (a) The DEPARTMENT will make a construction loan in the amount of **(XXX)** DOLLARS **(\$XXX)** to the BORROWER in accordance with EXHIBIT B.
- (b) The loan will bear compound interest at the rate of FOUR AND FIVE-TENTHS PERCENT (4.5%) per annum compounded continuously on the unpaid balance commencing with the warrant date of each transfer of loan funds by the DEPARTMENT.

2. LOAN REPAYMENT

- (a) Repayment of the loan shall be made from gross revenues originating from fees and rentals charged and received by the BORROWER for services, facilities and leaseholds provided or located within the PROJECT AREA (defined by EXHIBIT B); such gross revenues shall constitute security for loan repayment. However, to the extent that the revenues generated within such PROJECT AREA are insufficient to repay the loan, the BORROWER shall, as lawfully authorized, levy and collect such taxes as necessary to pay each installment of principal and interest as is due.
- (b) Repayment of the loan shall begin in the first year of the contract, but no later than August 1, **(YEAR)** . In the event that the loan is not fully disbursed by the above date, interest only payments shall be made until drawdown is completed.

3. PROJECT COMPLETION DATE

The BORROWER shall complete the PROJECT (defined by EXHIBIT B) no later than May 1, **(YEAR)**.

4. SPECIAL PROVISIONS

- (a) The BORROWER certifies that the obligation created by this contract will not create an indebtedness or liability contrary to the provisions of Section 18 of Article XVI of the Constitution of the State of California.
- (b) If for any reason whatsoever the BORROWER does not complete the PROJECT by the date stipulated in Paragraph 3 of this contract, then all loan moneys expended by the BORROWER prior to such date plus any accumulated interest are, to the extent permitted by

law, a general obligation of the BORROWER and shall be due and payable ONE HUNDRED EIGHTY (180) days after the close of fiscal year (YEAR).

- (c) The BORROWER shall establish a berthing rate for the (NAME) sufficient to cover requirements of Section 71.4(d) and 71.8 of the Harbors and Navigation Code; however, the rates for the rental of berths at the (NAME) shall not average (average calculated by dividing total berth revenues by total linear feet of berths) less than (\$xx.xx) per foot of boat or berth length (whichever is longer) per month beginning with July 1, (YEAR). The BORROWER shall adjust such rate or rates as necessary to keep them at a level which meets the aforesaid requirements; however, such adjustments shall be made no less than once each year and shall not be less than the equivalent percentage change (over the preceding year) in the United States Bureau of Labor Statistics' Consumer Price Index for the United States, or such other index as selected by the DEPARTMENT.
- (d) The BORROWER shall each year conduct a survey of berthing charges which prevail in the same market area as the (NAME) and shall transmit the results of the survey to the DEPARTMENT by the 1st of April of each year. The BORROWER shall establish berthing charges which are reasonable and not exorbitant.
- (e) Notices required between the parties shall be deemed to have been given when mailed to the respective addresses herein, first-class postage prepaid thereon.
- (f) If for any reason whatsoever the California State Legislature does not appropriate or the DEPARTMENT does not transfer for the use of the BORROWER such sums as identified in EXHIBIT C as necessary for the completion of the PROJECT, then the BORROWER shall have the option of taking either of the following two alternatives:
  - (aa) Return to the DEPARTMENT all moneys transferred to the BORROWER by the DEPARTMENT plus the interest (as specified above) accrued to date of said return;  
or
  - (bb) Proceed to complete the PROJECT using the BORROWER's own funds.

The BORROWER shall, within SIXTY (60) days following the close of the fiscal year in which the appropriation or transfer does not take place, forward to the DEPARTMENT a written notice stating which election has been made; if the BORROWER elects to return the money, then the money shall be returned within ONE HUNDRED TWENTY (120) days of the expiration of the aforesaid SIXTY (60) day period.

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EXHIBIT B

SMALL CRAFT HARBOR  
CONSTRUCTION LOAN AND OPERATION  
CONTRACT

STANDARD TERMS AND CONDITIONS

ARTICLE I - DEFINITIONS

- A. ACCOUNT: The interest bearing account to be established by the BORROWER for the deposit of LOAN funds; such account to be designated the CAL BOATING LOAN - Marina Development Account.
- B. BORROWER: The city, county, or district identified on the STD 213 attached to these Standard Terms and Conditions which requested and received a loan and which has the statutory authority to undertake the development of a small craft harbor, described in Section 71.4 of the Harbors and Navigation Code.
- C. COLLATERAL: Property, both real and personal, whether tangible or not, pledged as security for repayment of a debt, including but not limited to any or all of the following: an interest in real property; a mortgage or security interest (deed of trust) in real estate, including buildings or property of the BORROWER, a deed of trust or lease and leaseback of the project area; an irrevocable letter of credit equal to not less than the unpaid balance in an amount equal to the principal and estimated accrued interest; a collateral assignment of rents and leases equal to not less than 125 percent of BORROWER's total annual debt service to the DEPARTMENT; a security agreement; a Uniform Commercial Code financing statement (UCC-1).
- D. COMMISSION: The Boating and Waterways Commission.
- E. CONTRACT: The agreement regulating the disbursement and repayment of loan funds to which these standard terms and conditions are appended.
- F. DEFAULT:
  - 1. The failure of the BORROWER to make any payment required by the contract within 30 days of the due date of the payment.
  - 2. The failure of the BORROWER to comply with any other requirement of the contract. Such defaults, for failure to comply with terms of contract other than payments, may be cured by complying with the requirement within 180 days after receipt of written notice from the DEPARTMENT specifying such failure.
  - 3. The provision of false representations or false warranties by the BORROWER in response to any obligations under the contract.
  - 4. The failure of BORROWER to conduct appropriate proceedings in good faith to contest any levy or proceeding against the collateral or BORROWER's interest therein; or
  - 5. The filing of a petition by the BORROWER under the provisions of the Bankruptcy Code, or the failure of the BORROWER to conduct appropriate proceedings in good faith to contest a

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bankruptcy filing by a third party when such action affects the collateral.

- G. DEPARTMENT: The Department of Boating and Waterways.
- H. FUND BALANCE: Those revenues received by the BORROWER from any source within the PROJECT AREA less the BORROWER's expenses for (1) LOAN repayment, and (2) operation and maintenance of the PROJECT.
- I. LOAN: A loan for the purpose of acquisition, construction, and/or improvement of small craft harbors, related facilities, or connecting waterways, pursuant to Harbors and Navigation Code Section 71.4.
- J. PROJECT: The construction, improvement, acquisition, or maintenance of small craft harbors, related facilities, or connecting waterways described by and constructed pursuant to this CONTRACT
- K. PROJECT AREA: The area delineated in EXHIBIT C, within which the PROJECT will be undertaken..
- L. PROJECT COSTS: Those contract, equipment, labor, material and construction costs which are incurred by the BORROWER for the purpose of completing the PROJECT; however, such PROJECT COSTS shall not include indirect or overhead charges incurred by the BORROWER for its own personnel.
- M. RESERVE FUND: A separate and independent fund for the exclusive purpose of providing extraordinary, non-routine maintenance, repair or replacement during the loan period.
- N. SURPLUS REVENUES: Revenues received by BORROWER from any source within the project area less the BORROWER's expenses for (1) loan repayment, and (2) operation and maintenance (including the Reserve Fund) of the project; tax revenues may be considered as a revenue source.
- O. UNPAID BALANCE: Total outstanding debt, including principal, interest and penalties, if applicable.

## ARTICLE II - TERM OF CONTRACT

- A. The loan shall be made for a period of THIRTY (30) years beginning with the first distribution of loan funds to the BORROWER, or for such other period as is specified in the CONTRACT.
- B. This CONTRACT may be extended, amended or cancelled upon agreement of all parties.

## ARTICLE III - DISBURSEMENT OF LOAN

- A. The DEPARTMENT shall have no obligation to disburse any of the LOAN unless and until the BORROWER demonstrates to the satisfaction of the DEPARTMENT that the BORROWER has title

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to, or adequate interests in, the real property comprising the PROJECT AREA, including but not limited to the following:

1. land access to the PROJECT AREA by a maintained public way, and
  2. a right of passage over a waterway, open to the public, between the PROJECT and navigable waters, and
  3. easements or other rights of way outside the PROJECT AREA to provide utilities and services to the PROJECT.
- B. The DEPARTMENT shall have no obligation to disburse any of the LOAN to cover construction costs unless and until the BORROWER demonstrates that it has acquired permits necessary to construct and operate the PROJECT.
- C. The DEPARTMENT shall have no obligation to disburse any of the LOAN to cover construction costs unless and until the BORROWER has executed all collateral documents; such collateral documents are recorded if necessary; and conformed copies of such recording are in the DEPARTMENT's files.
- D. LOAN payments to cover PROJECT COSTS may be made either (1) in advance of PROJECT work or (2) after the occurrence of work (in arrears).
1. LOAN advances shall be subject to the following conditions:
    - (a) The BORROWER may request a LOAN advance from the DEPARTMENT to cover those PROJECT COSTS expected to occur in the succeeding THIRTY (30) day period.
    - (b) Requests for LOAN advances may not be made more than once every THIRTY (30) days.
    - (c) All advanced LOAN funds shall be deposited in the ACCOUNT which shall reflect all receipts and expenditures of LOAN funds.
    - (d) All expenditures of advanced LOAN funds shall be made only after receiving the written approval of the DEPARTMENT; requests for such approval must be accompanied by invoices or other evidence of PROJECT COSTS and may be made only once every THIRTY (30) days.
    - (e) The BORROWER shall request DEPARTMENT approval of the final expenditure of advance LOAN funds no later than THIRTY (30) days following the DEPARTMENT approval of PROJECT acceptance.

- (f) The DEPARTMENT may withhold from LOAN advances an amount equal to TEN PERCENT (10%) of approved PROJECT COSTS until the DEPARTMENT has approved the acceptance of the PROJECT.
  - (g) All LOAN funds advanced by the DEPARTMENT to the BORROWER shall remain under the control of the DEPARTMENT until the DEPARTMENT approves such funds for expenditure.
  - (h) The BORROWER shall invest any advanced LOAN funds that are not required to meet immediate contractual obligations; any interest accrued from such investments shall be deposited in the ACCOUNT and shall be used to help pay the PROJECT COSTS.
  - (i) The BORROWER shall return to the DEPARTMENT any LOAN funds including interest remaining in the ACCOUNT after all PROJECT COSTS have been paid; such LOAN funds shall be:
    - (aa) returned to the DEPARTMENT no later than SIXTY (60) days following date of acceptance of the PROJECT by the BORROWER, and
    - (bb) applied to the reduction of the LOAN.
- 2. LOAN payments made in arrears shall be made as follows:
  - (a) The BORROWER may request a LOAN payment in arrears not more than once every THIRTY (30) days; such requests must be accompanied by invoices or other evidence of PROJECT COSTS.
  - (b) The BORROWER shall record such payments in the ACCOUNT.
  - (c) The DEPARTMENT may withhold from LOAN payments an amount equal to TEN PERCENT (10%) of approved PROJECT COSTS until DEPARTMENT approval of PROJECT acceptance.
- D. The DEPARTMENT may withhold any LOAN payment if the BORROWER fails to comply with any of the provisions of this CONTRACT.
- E. The BORROWER shall, within 60 days of approval of this CONTRACT, provide the DEPARTMENT with a Project Schedule showing the proposed dates of the following PROJECT phases or milestones: Beginning and ending of BORROWER selection of the PROJECT design consultant; DEPARTMENT approval of the consultant contract; beginning and ending of PROJECT design; DEPARTMENT approval of final plans and specifications; beginning and ending of BORROWER advertising of PROJECT for bids; PROJECT bid opening date; DEPARTMENT

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approval of construction contract; beginning and ending of PROJECT construction; and, acceptance of PROJECT by the BORROWER.

#### ARTICLE IV - CONSTRUCTION OF PROJECT

- A. The BORROWER shall obtain from the DEPARTMENT advance written approval of the following:
  - 1. all bid documents prior to advertisement,
  - 2. all contracts prior to award,
  - 3. all construction change orders, and
  - 4. acceptance of the PROJECT by the BORROWER.
- B. Plans and specifications for the construction of the PROJECT shall:
  - 1. be prepared by persons licensed by the State of California to undertake the type of design required by the PROJECT (engineer's/architect's certificate number to appear on construction contract design documents),
  - 2. provide for all PROJECT facilities set forth in EXHIBIT C, and
  - 3. provide for shoreside facilities for removing waste from vessel holding tanks in accordance with Section 654.1 of the Harbors and Navigation Code and Section 5200 of the California Administrative Code, Title 14.
- C. All contracts for construction of the PROJECT shall:
  - 1. be awarded in accordance with all applicable laws and regulations,
  - 2. contain the following clause: "Representatives of the Department of Boating and Waterways shall be allowed access to all parts of the construction work.",
  - 3. contain a clause that there shall be no discrimination against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contractor and subcontractors shall ensure that the evaluations and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the



provisions of the Fair Employment and Housing Act (GC Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (CCR Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing GC Section 12990 (a-f), set forth in Chapter 5, Div. 4 of Title 2 of the CCR, are incorporated into this CONTRACT by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement,

4. contain a clause that the contractor shall comply with all air pollution and environmental control rules, regulation, ordinances and statutes which apply to the PROJECT and any work performed pursuant to the CONTRACT, and
  5. contain a clause that requires the contractors to ensure the structural integrity and safety of the PROJECT.
- D. Prior to the commencement of the construction of the PROJECT, the BORROWER shall cause the contractor and a corporate surety acceptable to the DEPARTMENT to furnish in favor of the BORROWER and the DEPARTMENT, as their interests may appear, bonds or other security interests as allowed pursuant to PCC 10263 & 22300 in the minimum amounts indicated below:
1. Faithful performance - ONE HUNDRED PERCENT (100%) of the total contract bid price.
  2. Labor and materials - ONE HUNDRED PERCENT (100%) of the total contract bid price.
- E. The BORROWER's personnel and construction of the PROJECT shall be under the supervision of qualified inspectors. Inspection reports and related inspection data shall at all reasonable times be accessible to the DEPARTMENT personnel, and on request copies of such reports and data shall be provided to the DEPARTMENT by the BORROWER.

## ARTICLE V - LAND CONTROL

- A. The BORROWER shall retain ownership of all land within the PROJECT AREA and shall not sell, exchange, transfer, mortgage, or hypothecate in any manner all or any portion of the real property within the PROJECT AREA, or required therewith, without the advance written approval of the DEPARTMENT.
- B. The BORROWER warrants that there shall be no encumbrance, lien, easement, license, title, cloud or other interest which may interfere with the PROJECT or use thereof by the public. Certification by the DEPARTMENT the BORROWER has satisfied the conditions precedent to disbursement of LOAN funds shall not affect this warranty.

## ARTICLE VI - OPERATION OF PROJECT

- A. The BORROWER shall operate the PROJECT as or in conjunction with a small craft harbor.
- B. The BORROWER shall:
1. continuously operate in an efficient and economical manner all PROJECT facilities acquired, constructed, improved, maintained, or completed, in full or in part, as a result of the LOAN,
  2. make all repairs, renewals and replacements necessary to keep the PROJECT in good repair at all times,
  3. operate, maintain and control the PROJECT with its own employees; however, the BORROWER may lease portions of the PROJECT AREA, provided that such leases are awarded in accordance with Harbors and Navigation Code Sections 72 or 72.2, and provided that such leases do not include any berthing systems or other such revenue producing items paid for by the LOAN,
  4. make the PROJECT facilities available to all on equal and reasonable terms,
  5. make all books, papers, records and accounts relative to the PROJECT open and available for inspection and audit by the DEPARTMENT or any authorized representative of the DEPARTMENT at any and all reasonable times, and
  6. periodically fix, prescribe, and collect fees, rentals, or other charges for services and use of facilities within the PROJECT AREA sufficient to produce gross income adequate for payment of the following in the order set forth:
    - (a) all installments of principal and interest on money owed to the DEPARTMENT as they come due, and
    - (b) all expenses of operation, maintenance, and repair of said facilities.
- C. The BORROWER shall establish a dual-signature Maintenance and Dredging Reserve Account with the DEPARTMENT as one of the signatories, and shall set aside the amount specified in EXHIBIT C. Such funds shall be used for extraordinary, non-routine maintenance, repair and/or dredging for the PROJECT throughout the LOAN period. BORROWER shall furnish proof of such account to the DEPARTMENT before the first loan draw. BORROWER shall provide annual account records to the DEPARTMENT on or before April 1 of each year and make account records available to the DEPARTMENT upon demand.

## ARTICLE VII -FUND BALANCE

- A. The BORROWER shall retain and invest the FUND BALANCE in reasonably liquid assets.
- B. Until the LOAN is paid in full, the BORROWER shall make no expenditure of the FUND BALANCE other than for the advance repayment of the LOAN or the following: the BORROWER may make FUND BALANCE expenditures for such purposes as enumerated by Section 71.9 of the Harbors and Navigation Code if before such an expenditure the BORROWER obtains the written approval of the DEPARTMENT and if the FUND BALANCE remaining after the expenditure will equal one and one-half (1.5) times the amount of the BORROWER's annual LOAN payments to the DEPARTMENT.
- C. The BORROWER shall record the FUND BALANCE in a separate account; such account shall reflect all (1) receipts by the BORROWER of revenues originating, and (2) BORROWER expenses occurring within the PROJECT AREA.

## ARTICLE VIII - LOAN REPAYMENT

- A. Payments of principal and interest on the LOAN shall:
  - 1. be made in equal annual installments as determined by the DEPARTMENT, begin no later than one year after final loan draw,
  - 2. be due and payable on the first day of August of each year, and
  - 3. be repaid in full during the contract term.
- B. The DEPARTMENT may make adjustments in the schedule of annual LOAN payments to reflect unscheduled payments of principal or interest that may be made.
- C. The BORROWER at its option may at any time make advance payment of all or part of the principal on the LOAN remaining unpaid.
- D. In the event the BORROWER fails, in whole or in part, to make payment due under this CONTRACT, all principal and interest outstanding shall become immediately due and payable.
- E. In the event the BORROWER fails, in whole or in part, to make any payment due under this CONTRACT, then such a deficiency shall be added to and become part of the principal of the LOAN.
- F. If any annual LOAN installment payment made by the BORROWER is less than the amount required under the terms of this CONTRACT, then such payment shall first be applied to reduce any accrued unpaid interest due on the LOAN while any remaining part of the payment shall be used to reduce the principal of the LOAN.

## ARTICLE IX - LIABILITY AND FIRE INSURANCE

- A. The BORROWER agrees to insure the PROJECT through any of the following alternatives:

### ALTERNATIVE I

The BORROWER shall maintain in full force and affect during the term of this CONTRACT the following insurance in the minimum amounts specified:

Bodily Injury or Death:	\$300,000 each person \$1,000,000 each occurrence
Property and Product Damage	\$500,000 each occurrence \$1,000,000 aggregate
Fire Insurance	90% of the full insurable value of all insurable components of the PROJECT.

### ALTERNATIVE II

1. The BORROWER agrees that all contracts between it and the designer (or designers) responsible for design and preparation of plans and specifications of the PROJECT shall contain a clause requiring said designer(s) to obtain Architect's Professional Liability (errors and omissions) Insurance in the amount of \$250,000.
2. The BORROWER agrees that all contracts between it and the contractor (or contractors) responsible for construction of the PROJECT shall contain a clause which requires the contractor(s) to obtain insurance in the minimum amounts specified in Alternative I.
3. The BORROWER prior to acceptance and operation of the PROJECT shall procure and maintain in full force and effect during the remainder of the term of this CONTRACT insurance in the amounts specified in Alternative I.

### ALTERNATIVE III

1. The insurance requirements specified in the preceding Alternative I may be satisfied to the extent that the BORROWER can provide comparable protection for the BORROWER and the DEPARTMENT by virtue of the BORROWER's participation in any "risk management" plan, self insurance program, insurance pooling arrangement, or any combination of these, provided that the protection plan has been reviewed by the DEPARTMENT.
- B. Copies of any policy or policies, including any new or renewal policy, shall be in a form satisfactory to the DEPARTMENT. Copies of such policy or policies shall be submitted to the DEPARTMENT at least TWENTY (20) days prior to the effective date or dates thereof.

- C. Under Alternative I above, any policy or policies shall contain the following endorsement:
- The State of California, its officers, employees and agents are hereby declared to be additional insureds under the terms of this policy, as to activities of both the BORROWER and the DEPARTMENT in respect to the PROJECT, and this policy shall not be cancelled without THIRTY (30) days prior written notice to the DEPARTMENT.
- D. Loss under any fire insurance policy shall be payable to the DEPARTMENT for deposit in an appropriate trust fund with the State of California, the proceeds may be paid to the BORROWER upon the BORROWER's application for the reconstruction of the destroyed facilities.
- E. The DEPARTMENT shall not be held liable for the payment of any premiums or assessments on such insurance policy or policies.

## ARTICLE X - INSTALLATION OF OTHER FACILITIES

- A. The BORROWER may at its own expense place or cause to be placed within the PROJECT AREA any structure or structures, alterations, and improvements in addition to those set forth and described in EXHIBIT C, provided that such facilities:
1. be constructed, maintained and operated for the use, enjoyment protection and service of the public,
  2. do not directly or indirectly reduce the service capabilities for the boating public called for in EXHIBIT C including the sanitary and parking facilities, and
  3. have the prior written approval of the DEPARTMENT.
- B. The DEPARTMENT shall not be obligated to make or cause to be made any alterations, improvements, or repairs to any facilities within the PROJECT AREA in addition to the original construction to the PROJECT as provided for herein.

## ARTICLE XI - SIGN REFERRING TO DEPARTMENT FINANCING

The BORROWER shall cause a permanent sign to be installed within the PROJECT AREA, which shall include a statement that the PROJECT was financed by the DEPARTMENT. The sign may contain additional statements which recognize the participation of other government agencies in the PROJECT. The sign shall be installed before the PROJECT is made available to the public. The location and make-up of the sign, including the dimensions, materials and lettering, shall be approved by the DEPARTMENT.

ARTICLE XII - DIRECTIONAL SIGNS

The BORROWER shall at the direction of the DEPARTMENT cause permanent directional signs to be installed so as to provide adequate directions to the public for reaching the PROJECT AREA. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits. The locations and make-up of the signs, including the dimensions, materials, and lettering, shall be as approved by the DEPARTMENT.

ARTICLE XIII - RIGHT OF THE DEPARTMENT TO TAKE POSSESSION OF THE PROJECT

- A. The Director of the DEPARTMENT may, at his or her option, take possession of the PROJECT if after NINETY (90) days written notice the BORROWER remains in breach of any of the provisions of this CONTRACT. The Director of the DEPARTMENT shall, after the exercise of such option, construct, operate or maintain the PROJECT for the account of the BORROWER until the LOAN is repaid in full; the income received from the PROJECT during such time shall be applied to the reduction of (1) the interest, and (2) the principal of the LOAN.
- B. The BORROWER does hereby consent to the Director of the DEPARTMENT taking possession of the PROJECT for the purposes enumerated by this article; and further, pursuant to the provisions of this article, the BORROWER grants to the Director of the DEPARTMENT the right of ingress and egress over all property owned or controlled by the BORROWER that is reasonably necessary for such purposes.

ARTICLE XIV - WAIVER OF RIGHTS

It is the intention of the parties to this CONTRACT that from time to time either party may waive certain rights under the CONTRACT. Any waiver at this time by either party hereto of its rights with respect to a default or any other matter arising in connection with CONTRACT shall not be deemed to be a waiver with respect to any other default or matter.

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ARTICLE XV - REMEDIES NOT EXCLUSIVE

The use by either the DEPARTMENT or the BORROWER of any remedy specified in this CONTRACT for the enforcement of the CONTRACT is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE XVI - OPINIONS AND DETERMINATIONS

Where the terms of this CONTRACT provide for action to be based upon the opinion, judgment, approval, review, or determination of either the DEPARTMENT or BORROWER, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

ARTICLE XVII - SUCCESSORS AND ASSIGNS OBLIGATED

This CONTRACT and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

ARTICLE XVIII - ASSIGNMENT

No assignment or transfer of this CONTRACT or any part hereof, rights hereunder, or interest herein by the BORROWER shall be valid unless and until it is approved by the DEPARTMENT and made subject to such reasonable terms and conditions as the DEPARTMENT may impose.

ARTICLE XIX - RIGHT OF ENTRY BY THE DEPARTMENT

The DEPARTMENT and its agents may, at any and all reasonable times during the term of this CONTRACT, enter the PROJECT AREA for purposes of inspecting the PROJECT.

ARTICLE XX - LIABILITY

- A. The BORROWER waives all claims and recourse against the DEPARTMENT including the right to contribution for any loss or damage arising from, growing out of, or any way connected with or incident to this CONTRACT.

- B. The BORROWER agrees to indemnify, defend and save harmless, the DEPARTMENT, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this CONTRACT, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by BORROWER in the performance of this CONTRACT
- C. If the DEPARTMENT is named as a co-defendant pursuant to Government Code Sections 895, et seq., the BORROWER shall notify the DEPARTMENT and represent it unless the DEPARTMENT elects to represent itself. If the DEPARTMENT undertakes its own defense, it shall bear its own litigation costs, expenses and attorney's fees.

## ARTICLE XXI - PRIOR TERMINATION

This CONTRACT shall terminate on the date specified in EXHIBIT A, Paragraph 3 of this CONTRACT if by such date (1) the BORROWER has not met all conditions precedent to disbursement under this CONTRACT, or (2) if no disbursement by the DEPARTMENT of LOAN funds occurs.

## ARTICLE XXII – APPROVAL

The CONTRACT is of no force or effect until signed by both parties and approved by the Department of General Service, if required. BORROWER may not commence performance until such approval has been obtained.

## ARTICLE XXIII - AUDIT

All contracts entered into by the BORROWER involving an expenditure of funds shall contain a provision which indicates that the contracting parties shall agree that the DEPARTMENT, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. BORROWER agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, contracting parties agree to include a similar right to the State to audit records and interview staff in any subcontract related to performance of this CONTRACT. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

## ARTICLE XXIV – RECYCLING CERTIFICATION



Sample

The BORROWER shall certify in writing under penalty of perjury, the minimum, not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the PCC Section 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this CONTRACT, regardless of whether the product meets the required recycled product percentage as defined in the PCC Section 12161 and 12200. BORROWER may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

#### ARTICLE XXV – CERTIFICATION CLAUSES

The *CONTRACTOR CERTIFICATION CLAUSES* contained in the document CCC201 are hereby incorporated by reference and made a part of this CONTRACT by this reference as if attached hereto.

#### ARTICLE XXVI– ANTITRUST CLAIMS

The BORROWER by signing this CONTRACT hereby certifies that if these services or goods are obtained by means of competitive bid, the BORROWER shall comply with the requirements of the Government Code Sections set out below.

- A. The Government Code Chapter on Antitrust claims contains the following definitions:
  - 1. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
  - 2. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.



#### ARTICLE XXVII - CHILD SUPPORT COMPLIANCE ACT

"For any contract in excess of \$100,000, the contractor acknowledges in accordance with, that:

- A. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.
- B. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

#### ARTICLE XXVIII - UNENFORCEABLE PROVISION

In the event that any provision of this CONTRACT is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this CONTRACT have force and effect and shall not be affected thereby.

#### ARTICLE XXIX- UNION ORGANIZING

For all contracts, except fixed price contracts of \$50,000 or less, the BORROWER acknowledges that:

- A. BORROWER will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- B. No state funds received under this agreement will be used to assist, promote or deter union organizing.
- C. BORROWER will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- D. If BORROWER incurs costs, or makes expenditures to assist, promote or deter union organizing, BORROWER will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that BORROWER shall provide those records to the Attorney General upon request.

BORROWER by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

Sample

EXHIBIT D

**LOAN CONTRACT**  
**SECURITY REQUIREMENTS**

ARTICLE I - DEFINITIONS

See EXHIBIT B for definitions of the terms of this exhibit.

ARTICLE II - PRIORITY OF FUTURE LOANS

The BORROWER agrees to incur no additional indebtedness having greater priority than the LOAN in payment of principal or interest or pledge of revenues involving the PROJECT AREA without first obtaining the written consent of the DEPARTMENT.

ARTICLE III - SECURITY INSTRUMENTS

In order to secure the payment of the principal and interest of the LOAN and prior to disbursement of funds under the CONTRACT by the DEPARTMENT, the BORROWER shall execute in favor of the DEPARTMENT, good and sufficient instruments to be determined by the DEPARTMENT, including but not limited to one or more of the following: a Deed of Trust, Lease Agreement, Lease Hypothecation Agreement, License Agreement, Universal Commercial Code, FORM-1 (UCC-1), Security Agreement and Fixture Filing encumbering the PROJECT AREA and/or associated real property and/or leasehold, as well as all fixtures and improvements financed through the proceeds of the LOAN. Failure of BORROWER and DEPARTMENT to agree upon sufficient instruments shall nullify this contract.